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CIVIL PROCEDURE IN MUNICIPAL COURT

BAR ASSOCIATION JUDICIAL TICKET

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Community Property—Estate Tax

By GEORGE M. THOMPSON

Under date of February 26, 1921, A. Mitchel Palmer, the United States Attorney General, in in answering questions submitted by the Treasury Department, issued an opinion which was embodied in Treasury Decision No. 3138, approved March 3, 1921, holding that in Washington, Arizona, Idaho, New Mexico, Louisiana and Nevada in computing Estate Tax there should be included in gross estate one-half only of the community property of husband and wife domiciled therein. The opinion did not allow this privilege to taxpayers domiciled in California, and the entire community property interest of California decedents was included in gross estate for the computation of the Federal Estate Tax.

In the case of Blum v. Wardell, the United States District Court for the Northern District of California held that the wife's community interest was exempt from tax, this judgment being affirmed by the Circuit Court of Appeals for the 9th Circuit, and on application to the United States Supreme Court for a writ of certiorari the motion was denied in March, 1922. On March 8, 1924, the then United States Attorney General, H. M. Daugherty, rendered an opinion which was embodied in Treasury Decision 3569 approved March 27, 1924, modifying the ruling contained in Treasury Decision 3138 and held that under the laws of California there should be included in the gross estate of a deceased spouse, for the purpose of computing the Estate Tax, only one-half of the community property of a husband and wife domiciled therein.

This ruling also stated that under the laws of California a husband and wife in rendering separate income tax returns might each report as gross income one-half of the income which became simultaneously with its receipt community property.

Treasury Decision 3569 was later withdrawn by Treasury Decision 3596 dated May

Ed. Note: The author of this article, George M. Thompson, is President of the Los Angeles Chapter of the California State Society of Certified Public Accountants. Our readers have followed with genuine interest the messages of the Los Angeles Chapter appearing on the double center pages of each issue of our Bulletin.

These messages traced the rise and development of Accountancy and disclosed the expediency, yea even necessity, of official supervision and certification; the pages are now being devoted to timely suggestions on the indispensability of certified public accountants in modern business.

These messages are just one part of a program of constructive publicity which the Los Angeles Chapter has undertaken. The Societies of Accountants, national, state, and local, are endeavoring to accomplish results similar to those achieved by Bar Associations in the legal profession. They are undertaking to preserve the dignity and integrity of the profession of Accounting. They seek to cooperate with business men by enabling them, when occasion arises to consult expert accounting advice, to avoid the calamity of "confusion worse confounded."

Official certification does not, ipso facto, create an expert accountant, but it does, and should, create a presumption of efficiency and adeptness. The Los Angeles Chapter of the State Society seeks to enlighten the business public to the end that it will differentiate intelligently and will avail itself of the protection which the law affords.

31, 1924, which decision stated that under date of May 27, 1924, the Attorney General withdrew the opinion of March 8, 1924, embodied in Treasury Decision 3569 and that in view of this action by the Attorney General the auditing and closing upon a community property basis of both income and estate tax cases arising in the State of California would be held in abeyance pending further consideration of the matter by the Attorney General.

Under date of October 9, 1924, United States Attorney General Harlan F. Stone issued an opinion which was embodied by the Treasury Department in Treasury Decision 3670 approved February 7, 1925, which opinion and ruling confirmed for Estate Tax purposes the former opinion of the Attorney General dated March 8, 1924 (T. D. 3569) but did not confirm the former opinion for purposes of income tax.

This latter opinion has been again reversed by the present Attorney General, John G. Sargent, under date of June 24, 1926, in an opinion embodied in Treasury Decision 3891 approved July 10, 1926, in which opinion it is held that in determining the gross estate of a deceased husband for the purpose of Federal Estate Tax there should be included the entire value of the community property.

This Treasury Decision states that in cooperation with the Attorney General, the Treasury Department will endeavor to obtain a decision from the Supreme Court of the United States decisive of the question involved and every effort will be made to expedite the case selected for the test.

It will thus be seen that for Estate Tax purposes, in 1921 the United States Attorney General ruled the entire estate was subject to tax. About the same time the case of Blum v. Wardell was decided, the Federal Court holding only one-half to be subject to tax. Subsequent to that time, two different Attorney Generals ruled that only one-half was subject to tax and the Internal Revenue Department in computing tax liability included only one-half of community estates for tax purposes. In a number of instances, refunds were made where the Estate had paid on the entire community interest.

The latest opinion by Attorney General Sargent indicates that the Government will attempt to protect its interest by making assessments of the amounts previously refunded and also all the amounts due from Estates which filed on the theory that only one-half was subject to tax.

The statute of limitations will act as a bar against the collection of a considerable portion of this tax as to those Estates wherein the decedent died some five years ago or more, but as to those Estates in which the decedent died subsequent thereto, the Department will have a right to claim additional taxes.

Actual cases exist wherein the Estate of a decedent has paid the tax on the full community interest and later the Government has refunded a substantial portion in view of the Solicitor General's opinions that only one-half was subject to tax. In a number of these cases, the Revenue Department will now attempt to recover the tax previously refunded even though the Estate has made a distribution thereof, and in many cases the money has been spent by the heirs of the Estate.

The estate of a decedent dying prior to 1921 is at a distinct advantage over the estate of a more recent decedent inasmuch as the tax in the first instance has been paid on the theory that only one-half of the community interest was taxable and no further amount can be collected on account of the Statute of Limitations having run against the Government.

Great pressure should be brought to bear on the Revenue Department officials to cause them to withhold the assessment of additional taxes as a result of this latest decision until a decision by the United States Supreme Court clearly defining how much of the community estate in California is subject to Federal Estate Tax is handed down. To impose the tax now before such a decision is handed down creates an unmistakable impression of resentment towards the Government by the people of California.

Civil Procedure Governing a Case at Law in the Municipal Court

By HENRY M. WILLIS

Presiding Judge, Municipal Court of the City of Los Angeles, California

The subject of this treatise is procedure governing civil actions in a Municipal Court, and is prepared and, through the courtesy of the "Bulletin," presented as a guide to attorneys in commencing and prosecuting actions in such court. It is not claimed that the statements herein are authority, but are only the statements of the law and rules, coupled with the conclusions of the author, made after careful study and from the limited experience had in administering the affairs of, and passing upon the law questions arising in the Municipal Court in Los Angeles. The Bar of this county has been so consistently kind in its attitude toward the new court, and so patient in assisting in the development of its procedure, that this effort of the presiding judge is expended as a mark and token of the gratitude of the Court and its several judges for such kindly reception and treatment, and in hopes that it may be of some substantial value to the members of the Bar whose practice reaches into this Court, and who are too busy to study out the manifold problems and questions which arise out of the new departure from the old-time sources and methods of administration of justice in courts in the State.

The method of treatment of the subject will be the logical one of taking up a law case at its commencement and accompanying it through to final determination in the order of its progress, with appropriate digressions where variations occur, with suggestions as to form or contents of pleadings, process or other papers required or used.

The basis of procedure in this court is a combination and co-ordination of the constitutional provisions relating to Municipal Courts, the Municipal Court Act, the new title Xa of the Code of Civil Procedure relating to "Civil Procedure in Municipal Courts," and the Rules adopted by this particular court. The general results effected by this combination are substantially those attained in procedure in the Superior Courts under the Code of Civil Procedure and its local rules, with exceptions and variations which are of great importance and are herein noted. And it is especially important to attorneys contemplating or having a suit in this court that they first dismiss from their minds all thoughts or memories of the procedure or practice in Township or Police Courts, for the reason that none of the provisions of the Code of Civil Procedure relating to such courts, contained in Titles XI and XII, and embracing sections 832 to 933, inclusive, have any bearing upon, or force or effect in proceedings in a Municipal Court. Indeed, no procedural matter in the Code relating to Justices' Courts has any place in this court with the exception of those sections relating to appeals to the Superior Court, which have been adopted as the procedural law of this court concerning civil appeals, and which will be herein treated in proper order. With this introduction, and a further reminder that this court has only a special and limited jurisdiction embracing "cases at law," and of actions of forcible or unlawful entry or detainer, and to enforce and foreclose liens on personal property, each within a specified maximum monetary limit, the subject will first be taken up by addressing attenion to the basic law providing for procedure and practice in this court.

The Procedure and Practice Established by Law

By section 11 of Article VI of the Constitution, it is declared that the legislature "shall provide by general law for the constitution, regulation, government and procedure of Municipal Courts." Under this authority, the legislature, in 1925, enacted a new title Xa of the Code of Civil Procedure, consisting of Chapter I relating to "Place of Trial of Civil Actions," and Chapter II relating to "Civil Proceedings in Municipal Courts." In the latter Chapter, section 831e provides:

> "Civil actions in the Municipal Courts shall be commenced and prosecuted in the manner provided by law for the commencement and prosecution of civil actions in the Superior Courts of this State, except:
>
> (1) The summons shall direct the defendant to appear and answer within five days after summons is served if served within the city in which the action is brought; within ten days if served out of the city but in the county in which the action is brought; and within twenty days if served elsewhere."

Section 831f of the same Chapter provides:

> "The rules of pleading and practice applicable to the prosecution of civil actions and enforcement of judgments in the Superior Court of this State shall apply to and govern the prosecution and maintenance of civil actions and enforcement of judgments in the Municipal Courts of this State, etc.,"

with exceptions relating to findings and answer in certain cases, and summary proceedings, which will be taken up later in proper order.

The "manner provided by law for the commencement" of civil actions in Superior Courts is prescribed in the Code of Civil Procedure in Title V of Part 2, and is entitled "Manner of Commencing Civil Actions," the first section being 405, which provides that civil actions are commenced by filing a complaint.

The Complaint

In addition to the requirements of section 426 and Rule 26 of this court, and the usual averments appearing in complaints filed in Superior Courts, the complaint in a Municipal Court should contain other averments necessary to fully reveal the jurisdiction of this court.

In actions on *contracts*, including debt, the complaint should contain a statement of all the facts relating to the time and place of the making of the contract, the time and place where performance or payment is to be done or made, if such be part

of the contract, and the time and place of its breach, in order that it will appear therefrom where the case arose, which is the test of the exclusive jurisdiction of this court, and becomes important in case a change of place of trial is demanded.

In actions in *tort*, the time and place of its commission should be clearly stated.

In actions of *ejectment*, the value of the use of the real property during the period of detention should be alleged, as such value is a test of jurisdiction,—not the value of the real property.

In actions of *unlawful detainer*, in addition to the requirement of section 1166 C. C. P. as to the amount of rent unpaid, it is necessary in a complaint filed in this court to also allege the rental value of the premises detained, as that is a test of jurisdiction, and while the contracted rent is a measure of damage in unlawful detainer, it is not conclusive on the question of rental value,—the basis fixed by the Constitution being "rental value."

In this connection, attorneys are warned to avoid use of a form of complaint in this kind of action, which contains an averment touching notice to pay rent or quit, about as follows: "That demand in writing was made by plaintiff of defendant to pay, etc." This is not equivalent to the allegation of service on the defendant of a three days' notice in writing in the form and manner required by subdivision 2 of section 1161, and section 1162 of C. C. P. Service of such notice is jurisdictional in unlawful detainer, and failure to allege such fact is fatal on demurrer and necessitates denial of judgment on default. (Lacrabere vs. Wise, 141 Cal. 554; Cowdell vs. Linforth, 10 Cal. App. 3.)

Special attention is at this point called to the proposition that proof of service of such notice to pay or quit cannot be made by affidavit. (Lacrabere vs. Wise, 141 Cal. 554.)

Residence of the parties should also be stated, if known.

Verification and subscription of complaints is governed by section 446 C. C. P., with attendant results prescribed by that section, except as to answer in certain cases, hereinafter noted under "Answer." Attention is here called to the all too frequent omission of attorneys to sign their complaints, thus leaving them open to attack by motion to strike. In forcible or unlawful entry or detainer, the verification is governed by section 1166 C. C. P.

The Summons

The process of summons issued by the Clerk of the Court in cases at law is governed by sections 406 to 416, inclusive, C. C. P., with the exception noted above fixing the time to appear and answer. In this connection, the court has held that the process of summons issued out of this court extends to all parts of the State, and may be served on a defendant wherever he may be found within the State, and when so served, the court assumes jurisdiction over the person of the defendant. This assumption of jurisdiction over the person of defendants served with summons within the State outside the County of Los Angeles is seriously questioned by some, but until a higher court decide otherwise, this court will continue to act on the assumption that, by the enactment of sections 831e and 831f, C. C. P., the legislature has extended such process of the court to all parts of the State, as authorized by section 5 of Article VI of the Constitution.

The summons in forcible or unlawful entry or detainer is governed by section 1167 C. C. P., the form of which is in print and supplied by the Clerk. Requirements as to application for order of publication of summons are set forth in Rule 22 of this Court.

Demurrers to Complaints and Amended Complaints

The fee for filing a demurrer by a defendant on first appearance is two dollars, while for such first appearance by answer the fee is only one dollar. (Sec. 4300-1 Pol. Code.) This discrimination has a tendency to lessen the number of demurrers filed in this court.

The grounds of demurrer are set forth in section 430 C. C. P., and upon its filing, in any case except forcible entry or unlawful detainer, the clerk immediately assigns the same to a civil division of this court, other than that of the presiding judge, for call on the ten o'clock calendar of the Monday succeeding such filing. (Subdivision 5 of Rule 8 of this Court.)

Demurrers in forcible entry or unlawful detainer are called on the ten o'clock calendar in the division of the Presiding Judge on the second judicial day after filing. (Subdivision 6 of Rule 8.)

No further notice of the calling up for hearing of demurrers is required or given, and attorneys are admonished to keep these rules in mind and to inquire of the Clerk or consult the law journals which publish the calendars of this court daily and in advance.

Sub. 7 of Rule 8 provides that on the call of the calendar, if there is no appearance, the Court may dispose of the demurrer or continue it for hearing. On second call, it must be disposed of, except for good cause.

By Rule 19 it is provided that if the demurrant fails to appear on the call of his demurrer, and the same should be overruled, or if the Court, in overruling a demurrer, shall decide that the same is frivolous, the party demurring shall be given leave to answer upon such terms as may be just. Time to answer the first complaint, after notice of order overruling demurrer, unless otherwise ordered, is five days. (Rule 19.) Where an amended complaint is served, after notice of order sustaining demurrer, with leave to amend, or after order to amend, the defendant has ten days after service thereof, or such other time as the Court may direct, within which to answer. (Sec. 432 C. C. P.) Because of the discrepancy occasioned by the section just cited in respect to the statutory ten-day period thereby fixed for answering an amended complaint, it is the practice of the Court, in sustaining demurrers with leave to amend, to include in the order a requirement that defendant must answer the amended pleading within five days after service unless, for good reason, a different period is fixed. When plaintiff files an amended complaint, as of course, under section 472 C. C. P., or a complaint in intervention under section 387 C. C. P., the defendant is given ten days within which to demur or answer by the terms of those sections.

Demurrer to Answer or Counterclaim

As section 433 C. C. P. is adopted as a rule of procedure binding upon this Court, it appears that

(Continued on page 11)

Bar Association Ticket—Election August 31, 1926

INDORSED FOR LONG TERM

Chas. S. Burnell.
Chas. S. Crail.
Walter S. Gates.
Harry A. Hollzer.
P. E. Keeler.
Sidney N. Reeve.
Ruben S. Schmidt.
Albert Lee Stephens.
F. C. Valentine.
Myron Westover.

UNEXPIRED TERM OF J. M. YORK

William Hazlett.

UNEXPIRED TERM OF L. H. VALENTINE

Edward T. Bishop.

UNEXPIRED TERM OF J. P. WOOD

No endorsement.

A Few Words from the Judiciary Campaign Committee

The campaign for the Bar Association Ticket is launched. **Headquarters, 1104 Rives-Strong Building. J. J. Petermichel in charge. Phone TU. 5763.**

The call for funds has resulted in response from about one-tenth of the members. Contributions have been liberal. Co-operation of the members is absolutely essential to the success of the campaign—this does not mean maybe—and that means financially as well as personal work. Kindly send in your checks immediately, as the committee must have funds on hand to be able to plan its campaign.

Literature for distribution is available and will be furnished upon request. Do not hesitate to call up headquarters and make your needs known. Also, do not hesitate to make suggestions to the committee as to the campaign. We want the full and hearty co-operation of every member.

Use stamped envelope for transmitting your check.

JUDICIARY CAMPAIGN COMMITTEE,
JOHN W. KEMP, Chairman.

Message of the Los Angeles Chapter of Certified Public

YOUR STANDING

What is the answer of the credit man at your ba
for the bank's own information, he is asked for

When these inquiries come to a bank's credit d
man pushes his call button and asks for your fi

Will it be a certified balance sheet, or is it, possi
ment of your net worth?

If you have given your bank a financial statem
countant, you have followed the procedure ap
Credit Men, by the Federal Trade Commissio

Chapter of the California State Society
Public Accountants

ING AT THE BANK

at your bank when, after your reference to him, or asked for a report on your financial standing?

's credit desk—as they do come daily—the credit or your financial statement from his files.

is it, possibly, merely your own unsupported state-

cial statement, certified by a Certified Public Ac-cedure approved by the National Association of ommission, and the Federal Reserve Bank.

PROCEDURE IN MUNICIPAL COURT

(Continued from page 6)

plaintiff has ten days after service of the answer within which to demur.

Demurrer to Cross-Complaint

By section 442 C. C. P., it is provided that the defendant, in a cross-complaint may demur or answer thereto "as to the original complaint." If the parties affected by the cross-complaint have not appeared in the action, summons must be issued and served. Hence it follows that defendants named in cross-complaints, whether previously appearing or not, have the same times within which to demur or to answer the cross-complaint as to the original complaint, namely, five days if served within the city, ten days if served outside the city but in the county, and twenty days if served elsewhere.

Notice of Decision on Demurrer

Attention is specially called to the provision of section 476 C. C. P., wherein it is provided that time to amend or answer, after order on demurrer, begins to run from the *service* of notice of such decision or order. And to section 1010 C. C. P., which requires notices to be in writing and served as provided in sections 1011 et seq. C. C. P. This notice and service thereof may, of course, be waived by the party entitled thereto by consent expressed in open court and entered upon the minutes.

Motions to Strike

Motions to strike pleadings or from pleadings are governed by the provisions of section 453 C. C. P. and the practice developed thereunder in Superior Courts, and as fixed by rules of this Court. By Rule 23, it is required that the notice of such motion shall distinctly specify the portions to be stricken, being identical with Rule 31 of the Superior Court. As the notice of such motion is controlled by section 1010 C. C. P., and the time of service thereof by section 1005 C. C. P., it not infrequently happens that when a demurrer and notice of motion to strike are filed at the same time, the demurrer under the rule goes to the following Monday calendar, while the motion may be of necessity noticed for a subsequent Monday. To avoid this, attorneys are requested to secure an order shortening time of notice of such motion so as to make its hearing coincide with the hearing on the demurrer, unless the two may be properly heard separately. Otherwise, the court will ordinarily continue the hearing on the demurrer to the date of motion, when apprised of the pendency of the latter, provided the motion is noticed for the first Monday after the five-day period of notice required.

Other Motions

All ex parte motions are made to the Presiding Judge, and motions to advance or reset a case already set for trial shall be made on notice in the division of the Presiding Judge. Likewise all motions to consolidate causes pending in different divisions shall be made in the division of the Presiding Judge. (Rule 8.) All other motions affecting pleadings or procedure in a case should be noticed for hearing in the Division to which the case has been assigned except, when securing an order shortening notice, it should appear that the day fixed falls on a day other than Monday, in which case the motion should be noticed to be heard in the division of the Presiding Judge, unless for special reasons the same ought to be heard by the Judge of the Division to which the case had been previously assigned. Motions to release or discharge attachments and proceedings on justification of sureties on undertakings should be noticed for hearing in the division of the Presiding Judge.

The Answer

The time within which to answer after service of summons is fixed by section 831e at five days if served within the city, ten days if served outside the city but within the county, and twenty days if served elsewhere. This latter clause controls service by publication also. By Rule 19, five days is the time within which to answer after notice of overruling demurrer, unless otherwise ordered, and by section 432 C. C. P., ten days in which to answer an amended complaint, unless otherwise ordered.

The contents of the answer are defined and prescribed by section 437 C. C. P., except as modified by sub. 2 of section 831f hereinafter quoted, and attention is specially called to subdivision 2 of section 437, relating to counterclaim, in connection with sections 438 and 439. The latter section provides that if the defendant omits to set up a counterclaim upon a cause of action arising out of the transaction set forth in the complaint, he and his assignee is thereafter barred from maintaining an action thereon. As the jurisdiction of this court in cases at law is fixed at the maximum of one thousand dollars, it follows that a counterclaim, wherein affirmative relief exceeding that amount is sought, would fall without the jurisdiction of this court, and hence would be subject to motion to strike. The situation is the result of oversight on the part of the legislature when providing for the procedure in this court, in failing to amend section 439, or by independently enacting a law, whereby only such counterclaims upon which an action might be brought in Municipal Courts should be barred, as is provided with reference to Justices' Courts in sections 855 and 856 C. C. P. This omission has resulted in several injunction orders being issued by the Superior Court, in actions brought therein on the counterclaim, with prayer for an injunction against further prosecution of the action on the main claim in this Court, until the whole controversy might be determined in the Superior Court. This results in the parties being reversed as litigants, and plaintiff in this Court becomes defendant in the Superior Court, where he is obliged to plead his claim herein sued upon as a counterclaim therein. This is a temporary expedient in the interests of justice, but requires correction by the next legislature.

A cross-complaint is permissible in this Court under the terms of section 442 C. C. P., but of course must be within the jurisdictional limits of the court as to demand or other relief, and must be filed under separate cover, and the defendants therein may answer within the same time as to the original complaint. (Sec. 442 C. C. P.)

Subdivision 2 of section 831f provides that:

"When the demand exclusive of interest, or the value of the property in controversy does not exceed three hundred dollars, the defendant at his option, in lieu of demurrer and other answer, may file a general written denial verified by his own oath and a brief statement similarly verified, of

any new matter constituting a defense or counterclaim."

Attention is specially called to the phrase "verified by his *own* oath" in the foregoing provision, as a substantial modification of section 446 C. C. P., which in terms permits others than the party to verify a pleading. Also, that this provision is not available after demurrer has been filed.

Assignment and Setting of Cases for Trial

Under Rule 7, all civil cases are assigned in the first instance by the clerk to one of the civil divisions, such assignment being made at the time of filing of a demurrer or notice of motion, or in the absence of both, when request for setting for trial is made. The case remains in such division unless transferred by the Presiding Judge. If, previous to such assignment, a party desires to make a motion affecting the case, he should so inform the clerk, who will thereupon assign the case to a division, and the party shall notice his motion to be heard therein. (Rule 7.)

When the cause is at issue on the facts, it will be set by the clerk for trial in a non-jury civil division, when a jury is not demanded, upon request of either party in writing on forms furnished by the clerk. (Sub. 3, Rule 7.) And if a jury is demanded by the moving party, he shall so state in his request for setting, and deposit twenty-four dollars with the clerk, in which event the cause will be set in a civil jury division.

If the party not participating in the request for setting desires a jury, he shall make demand and deposit twenty-four dollars with the clerk within five days after notice of such setting, whereupon the previous setting in a non-jury division is annulled under the rule, and the clerk will forthwith reset in a jury division, and mail or deliver notice thereof to the parties or their attorneys. (Rule 9.)

No written notice of trial is required to be given by one party to another, but it is to be borne in mind that, until a five days' notice of setting of the trial has elapsed, the party who did not procure or join in procuring the setting has the right to demand a jury. (Section 631, sub. 4 C. C. P.) And trial of an issue of fact cannot proceed against an absent party until proof is first made to the satisfaction of the Court that the adverse party has had five days' notice of such trial. (Section 594 C. C. P.) While the notice mentioned in the last section cited need not be in writing, but may be oral or in any form which will satisfy the Court that the party has had five days' previous notice of the setting, (McGuire vs. Drew, 83 Cal. 225; Johnson vs. Callahan, 146 Cal. 212), yet it is strongly urged upon attorneys to adopt and use the method of serving a precise notice of such setting in writing and file the same, with proof of service, in the office of the clerk. Such proof, either in the form of signed admission of receipt by the attorney or party, or by affidavit of the party making the service, is usable as evidence of service. (Section 2009 C. C. P.)

The Trial

The trial proceeds in this Court precisely as in Superior Courts, the same rules of evidence and of practice being made applicable. (Sec. 831f C. C. P.) There is a variation, however, with reference to an official phonographic report of the proceedings at the trial from that prevailing in Superior Courts. With the exception of the provision in subdivision 3 of Section 831f C. C. P., requiring that all proceedings in summary trials shall be taken down by a court reporter, and his notes or transcript thereof certified and filed with the clerk, there is no provision of law which creates the office of court reporter in Municipal Courts, nor which authorizes the Court to appoint one. The existing law relating to phonographic reporters in trial courts is confined to Superior Courts (sections 269 to 274b, inclusive, C. C. P.), and no legislative action has yet been taken to extend those sections of the code to this Court. Therefore, when a party in a civil action desires the proceedings at the trial reported, he should provide and privately compensate a competent reporter, satisfactory to the judge of the court, if the judge is expected to rely upon the notes or transcript of such reporter in subsequent proceedings, as the quality thereof as evidence is not established by section 273 C. C. P. as in the case of an official reporter. In short, there is, and at present can be, no official reporter of any civil division of this Court, and except when appointed by the Court to report summary proceedings in a given case, no reporter in a civil case is official unless perhaps, in a case where, by consent of all parties, evidenced by stipulation in writing or minute entry, the Court appoints a reporter for the case, in which event he might well be deemed official.

In jury cases the jury is impaneled and trial is had as in the Superior Court, and under Rule 9, sub. 3, all instructions asked for by either party must be presented to the Court at or before the close of the evidence and before argument.

Default Trials

All default cases requiring proofs to liquidate a claim or fix atorney's fees, or to establish the default of defendant served in forcible or unlawful entry or detainer, or in cases where summons is served by publication, shall be heard in the division of the Presiding Judge, and may be placed on any 10 o'clock or 2 o'clock calendar. (Rule 4, sub. 4.) Files in such cases should be presented to the clerk prior to the call of the calendar, and attorneys are specially requested to see that all papers on which they expect to rely are in the record in court, and to have form of judgment and cost-bill ready for completion and signature at the time of hearing. To expedite trial of contested cases requiring immediate trial, or to accommodate counsel or parties or witnesses in default cases, the Presiding Judge will take up and hear such cases upon application of the interested parties, although not calendared under the rule.

Cost Bills

Cost bills after contested trials should be served within five days after verdict, or notice of the *decision.* (Section 1033 C. C. P.) Cost bills in default cases should be prepared ready for taxation at the time of hearing. Notice of motions to tax costs under section 1033 C. C. P. shall specify the papers to be used on the motion, the items of the cost bill objected to and the grounds of the objection. (Rule 10, sub. 4.)

The Verdict, Decision and Judgment

In jury trials, the verdict and the judgment entered thereon are subject to the same law that

governs the Superior Court. (Sections 624-629 and 664 C. C. P.)

In civil non-jury trials, a variation from the law and practice in Superior Courts occurs in respect to findings. Sub. 1 of section 831f C. C. P. provides as follows:

> "In cases tried by a court without a jury, the court shall not be required to make any written findings of fact and conclusions of law when the matter involved is three hundred dollars ($300) or less, exclusive of interest and costs, and in all other cases written findings shall be deemed to be waived unless they shall be expressly requested by one of the parties at the time of trial."

Hence, where findings are not required by law or by the parties, the decision of the Court will be evidenced officially by a minute order, instead of by findings and conclusions in writing signed and filed. (Sec. 632-634 C. C. P.) This minute order, which becomes the "decision" of the Court, and constitutes the "rendition of judgment," is the order entered in the clerk's regular minute book—not in the courtroom clerk's "rough minutes," and until such minute order is so entered, no judgment is "rendered." (Smith vs. Ross, 57 Cal. App. 191.) These terms as recited above, and the law as stated in connection therewith, are important in view of the fact that certain subsequent proceedings are affected by notice thereof. The judgment of the Court, based upon its decision either in the form of findings or minute order in the clerk's minutes, is a separate writing and is signed by the judge, and when signed and filed, constitutes the judgment which is entered and docketed by the clerk and becomes a lien upon all real property of the judgment debtor under the provisions of section 671 C. C. P.

New Trial and Vacation of Judgment

While there has been some question as to the power of this Court to entertain and act upon motions for new trial and to vacate judgments and enter different ones, the Court, nevertheless, has assumed that such power has been conferred by the terms of sections 831e and 831f C. C. P., and in considering and passing upon such motions, the Court is governed by the provisions of sections 656 to 663a C. C. P.

Execution and Enforcement of Judgment

The rules and practice applicable to the enforcement of judgments in the Superior Court was made to apply in Municipal Courts by section 831f C. C. P. Hence all the provisions of Title IX Part 2 C. C. P., comprising sections 681 to 713½, inclusive, govern in such matters in this Court, and executions are issuable to any county in the State.

Exemption from Execution

The same method of securing release of property exempt from execution or attachment used in the Superior Court is applicable to this Court, namely, a motion to release, made on notice, and supported by proof by affidavit. With respect, however, to moneys levied upon under section 710 C. C. P., and which comes into the custody of the Court, a rule has been adopted by the Court, (Rule 29) providing that the exemption claimant shall serve a two-day notice, accompanied by affidavit, on the judgment creditor, of his intention to move for a release of such money or such part thereof as may be exempt. Printed forms for the purpose are furnished by the clerk.

(To be concluded in next issue)